

**ENTERED**

April 10, 2023

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION****DANIEL NEAL MARTIN,****Plaintiff,****v.****Civil Action No. 2:22-CV-00156****LIVE OAK COUNTY JAIL, LIVE OAK  
SHERIFF'S DEPARTMENT, CARA  
KAY JOINER BARTON, in her official  
capacity, MAURICE CHAMBERS, in his  
official capacity, DANIEL COBAN  
BARTON, in his official capacity,  
SHERIFF LARRY BUSBY, in his  
official and individual capacities, CHIEF  
DEPUTY CARHLIE STROLENY, in his  
official and individual capacities,  
CAPTAIN MISTY GONZALEZ, in her  
official and individual capacities, CORP.  
VASQUEZ, in his official and individual  
capacities, and JAILER PERRY (also  
known as CORPRAL PERRY), in his  
official and individual capacities,****Defendants.****ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the January 23, 2023, Memorandum and Recommendation ("M&R") prepared by Magistrate Judge Mitchel Neurock. (Dkt. No. 41). Magistrate Judge Neurock made findings and conclusions and recommended that the Court (1) retroactively grant leave for Plaintiff to file his second amended complaint, (2) dismiss without prejudice Plaintiff's claims against all Defendants in their official capacities, (3) dismiss with prejudice Plaintiff's claims against Sheriff Larry Busby, Chief

Deputy Charlie Stroleny, Captain Misty Gonzalez, Corp. Vasquez, and Jailer Perry in their individual capacities, (4) deny Plaintiff's motions for preliminary injunction, (5) deny Plaintiff's motion to consolidate cases as moot, and (6) deny Plaintiff's motion to change venue in his state criminal case. (*Id.* at 1–2).

The Parties were provided proper notice and the opportunity to object to the M&R. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). On February 8, 2023, Plaintiff filed four objections. (Dkt. No. 42). First, Plaintiff requests that the Court “table” this case pending the resolution of his state criminal case so that he can bring evidence of personal involvement. (*Id.* at 1). Second, Plaintiff reiterates his claimed civil rights violations, adding new claims under the Eighth Amendment. (*Id.* at 2–3). Third, Plaintiff requests leave to file a third amended complaint. (*Id.* at 3). Finally, Plaintiff emphasizes his claimed First Amendment violation. (*Id.* at 3–6).

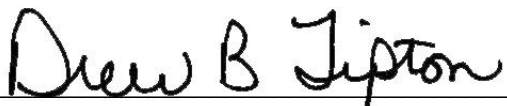
In accordance with 28 U.S.C. § 636(b)(1)(C), the Court is required to “make a de novo determination of those portions of the [magistrate judge’s] report or specified proposed findings or recommendations to which objection [has been] made.” After conducting this de novo review, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” *Id.*; *see also* Fed. R. Civ. P. 72(b)(3).

The Court has carefully considered de novo those portions of the M&R to which objection was made, and reviewed the remaining proposed findings, conclusions, and recommendations for plain error. Finding no error, the Court accepts the M&R and adopts it as the opinion of the Court. It is therefore ordered that:

- (1) Magistrate Judge Neurock's M&R, (Dkt. No. 41), is **ACCEPTED** and **ADOPTED** in its entirety as the holding of the Court;
- (2) the Court **GRANTS** the Plaintiff leave to file his Second Amended Complaint, (Dkt. No. 35);
- (3) the Court **DISMISSES WITHOUT PREJUDICE** Plaintiff's claims against all Defendants in their official capacities (including Live Oak County Jail, Live Oak County Sheriff's Department, Cara Kay Joiner Barton, Maurice Chambers, Daniel Coban Barton, Sheriff Larry Busby, Chief Deputy Charlie Stroleny, Captain Misty Gonzalez, Corp. Vasquez, and Jailer Perry), (Dkt. Nos. 1, 11, 35);
- (4) the Court **DISMISSES WITH PREJUDICE** Plaintiff's claims against Sheriff Larry Busby, Chief Deputy Charlie Stroleny, Captain Misty Gonzalez, Corp. Vasquez, and Jailer Perry in their individual capacities, (Dkt. Nos. 11, 35);
- (5) the Court **DENIES** Plaintiff's Motions for Preliminary Injunction, (Dkt. Nos. 13, 37);
- (6) the Court **DENIES** Plaintiff's Motion to Combine Case, (Dkt. No. 27); and
- (7) the Court **DENIES** Plaintiff's Motion to Change Venue, (Dkt. No. 28).

It is SO ORDERED.

Signed on April 10, 2023.

  
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DREW B. TIPTON  
UNITED STATES DISTRICT JUDGE